

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re Case No. 08-15001-A-7
MICHAEL ANTHONY BOGESS

Debtor.

FINDINGS OF FACT AND CONCLUSIONS OF LAW
REGARDING EX PARTE MOTION TO REOPEN CASE
TO SCHEDULE UNSCHEDULED ASSET; REVOKE DISCHARGE;
AND CONVERT TO CHAPTER 13

Michael Anthony Boggess filed his chapter 7 case on August 19, 2008. He received his discharge on December 23, 2008. On May 14, 2009, he filed an "Ex Parte Motion to Reopen Case Pursuant to 11 USC § 105(a), Rule 5010 and 350(b) [sic] ." The Ex Parte Motion states that the debtor moves to reopen his chapter 7 case "for the purposes of scheduling a previously unscheduled asset." The Memorandum of Points and Authorities attached to the Ex Parte Motion states that the debtor failed to schedule a commission in the amount of \$52,055.17. It goes on to state that he seeks the reopening of his case so that he "may correctly schedule this asset, and convert to a chapter 13."

However, the proposed order that the debtor submitted in connection with this Ex Parte Motion requests an order that the chapter 7 case is reopened and that "Debtor revokes the chapter 7

1 discharge in order to be able to convert this case to a chapter
2 13 case, and obtain his discharge through that process."

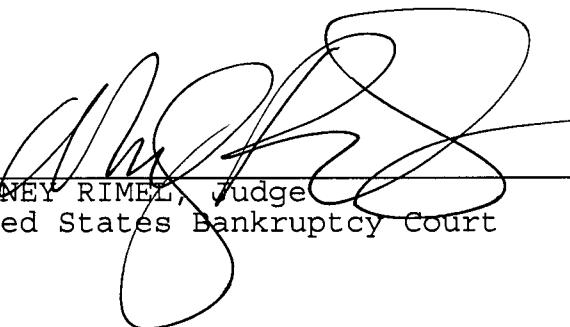
3 There is no authority for the debtor to revoke a discharge.
4 Revocation of discharge is governed by Bankruptcy Code § 727(b).
5 That section allows a trustee, a creditor, or the United States
6 Trustee to request revocation of discharge. The United States
7 Bankruptcy Appellate Panel for the Ninth Circuit considered this
8 question in In re Markovich, 207 B.R. 909 (9th Cir. BAP 1997).
9 The Bankruptcy Appellate Panel stated that a debtor does not have
10 standing to vacate his chapter 7 discharge under § 727(d). In
11 accord is Collier on Bankruptcy (15th ed. Rev. 2009) at ¶ 727.15.

12 Certainly a bankruptcy case may be reopened to administer a
13 previously unscheduled asset. 11 U.S.C. § 350. The debtor who
14 has received a discharge in chapter 7 may file a chapter 13 case.
15 Johnson v. Home State Bank, 501 U.S. 78 (1991).

16 Therefore, the Ex Parte Motion is granted in part. A
17 separate order will issue.

18 DATED: June 15, 2009

19
20
21 WHITNEY RIMEL, Judge
United States Bankruptcy Court
22
23
24
25
26
27
28



1 PROOF OF SERVICE BY MAIL

2 STATE OF CALIFORNIA)
3 COUNTY OF FRESNO) ss.

4 I am a citizen of the United States and a resident of the
5 county aforesaid; I am over the age of eighteen years and not a
6 party to the within above-entitled action; my business address is
7 2656 U.S. Courthouse, 1130 O Street, Fresno, California, 93721.

8 On June 19, 2009, I served the within document on the interested
9 parties in said action by placing a true copy thereof enclosed in
10 a sealed envelope with postage thereon fully prepaid, in the
11 United States mail at Fresno, California, addressed as follows:

12 Neil E. Schwartz, Esq.
13 4900 California Ave., #B210
Bakersfield, CA 93309

14 Randell Parker
15 Chapter 7 Trustee
3820 Herring Road
Arvin, CA 93203

16 Office of the United States Trustee
17 2500 Tulare Street
Suite 1401
18 Fresno, California 93721

19 I certify (or declare), under penalty of perjury, that the
20 foregoing is true and correct. Executed on June 19, 2009, at
21 Fresno, California.

22 
23 _____
Kathy Torres, PLS

24
25
26
27
28